

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOUREY NEWELL, individually and on behalf  
of a class of all persons and entities similarly  
situated,

Plaintiff

vs.

RISEUP FINANCIAL GROUP, LLC

Defendant.

Case No. 25-cv-1402

**PLAINTIFF’S OPPOSITION TO THE MOTION TO STAY DISCOVERY**

The Court should deny Defendant RiseUp Financial Group LLC’s (“RiseUp” or “Defendant”) motion to stay discovery (ECF No. 22) in all respects because staying discovery in this case will be inefficient and prejudicial.

**I. A Stay Would be Prejudicial to Plaintiff**

The decision of whether to stay discovery while considering a motion to dismiss is within the court's sound discretion. *In re Orthopedic Bone Screw Prod. Liab. Litig.*, 264 F.3d 344, 365 (3d Cir. 2001). However, “the court should not automatically stay discovery because a party has filed a motion to dismiss”. *See Pfizer Inc. v. Johnson & Johnson*, 2018 U.S. Dist. LEXIS 31690, \*2 (E.D. Pa.).

Defendant has failed to carry its burden to justify a stay of discovery. Defendant asserts that a stay is warranted because a resolution of its pending motion to dismiss and to strike class allegations because it may win. This does not constitute good cause to justify a stay. Indeed, “had the Federal Rules contemplated that a motion to dismiss under Fed. R. Civ. P. 12(b)(6) would stay

discovery, the Rules would contain a provision to that effect.” *Valenzuela v. Crest-Mex Corp.*, No. 3:16-cv-1129-D, 2017 U.S. Dist. LEXIS 98963, 2017 WL 2778104, at \*5 (N.D. Tex. June 26, 2017). Moreover, Defendant’s pending motions are not likely to succeed in any event.

Defendant’s Motion to Dismiss ignores allegations in the complaint that must be taken as true and asks the Court to draw unreasonable inferences in Defendant’s favor instead of reasonable inferences in Plaintiff’s favor, as is required. Thus, a stay of discovery would serve no purpose other than to cause unnecessary delay and prejudice Plaintiff’s ability to prosecute his case.

Furthermore, a delay from a stay of discovery would in fact prejudice Plaintiff and other class members by amplifying the risk that evidence will be lost or destroyed. *See, e.g., Saleh v. Crunch, Ltd. Liab. Co.*, No. 17-62416-Civ-COOKE/HUNT, 2018 U.S. Dist. LEXIS 36764, at \*4-5 (S.D. Fla. Feb. 28, 2018) (“a stay would prolong this matter on the Court’s docket and could conceivably prejudice Plaintiff by the fading memory of any witnesses”); *Lathrop v. Uber Techs., Inc.*, No. 14-CV-05678-JST, 2016 WL 97511, at \*4 (N.D. Cal. Jan. 8, 2016) (plaintiffs in putative class action may “suffer prejudice from a stay because the case would extend for an indeterminate length of time, increase the difficulty of reaching class members, and increase the risk that evidence will dissipate”).

The risk to the putative class members’ interests is not merely hypothetical. Multiple decisions in TCPA class action cases have turned on the destruction of records necessary to identify class members. *See, e.g., Levitt v. Fax.com*, No. 05-949, 2007 WL 3169078, at \*2 (D. Md. May 25, 2007) (denying class certification in a TCPA case because “critical information regarding the identity of those who received the facsimile transmissions” was not available); *Pasco v. Protus IP Solutions, Inc.*, 826 F. Supp. 2d 825, 831 (D. Md. 2011) (granting the defendant summary judgment for the substantially the same reason). As such, courts regularly permit plaintiffs to

commence discovery prior to a Fed. R. Civ. P. 26(f) conference related to these issues implicating non-parties in TCPA cases. *See, e.g., Cooley v. Freedom Forever LLC et. al.*, No. 2:19-cv-562, ECF No. 37 (D. Nev. July 19, 2019); *Cooley v. First Data Merchant Services, LLC et. al.*, No. 19-cv-1185, ECF No. 32 (N.D. Ga. July 8, 2019); *Abante Rooter and Plumbing, Inc. v. Birch Commc'ns, Inc.* No. 15-cv-03562, Dkt. No. 32 (N.D. Ga. 2016); *Mey v. Interstate National Dealer Services, Inc., et al.*, No. 14-cv-01846, Dkt. No. 23 (N.D. Ga. Aug. 19, 2014).

Plaintiff will also be prejudiced by a stay because, “with the passage of time, the memories of the parties and other witnesses may fade, witnesses may relocate or become unavailable, or documents may become lost or inadvertently destroyed.” *Sanaah v. Howell*, 2009 No. 08-cv-02117-REB-KLM, U.S. Dist. LEXIS 35260, \*2 (D. Colo. Apr. 9, 2009).

By contrast, Defendant will not be prejudiced at all if Plaintiff is permitted to proceed with discovery in the ordinary course. As another federal court explained in denying a motion to stay discovery in a TCPA case:

In addition, [defendant] has not demonstrated irreparable injury; it notes only that it is potentially on the hook for substantial damages, given the putative nationwide class. Monetary damages, of course, do not by themselves constitute irreparable injury. [plaintiff], on the other hand, persuasively argues that she would be injured by a stay, particularly because discovery has yet to commence, and evidence is at risk of being lost. This injury, which is both likely and irreparable, far outweighs the injury posed by a potential future judgment for money damages.

\* \* \*

In the meantime, it is clear that critical evidence, including records from any third parties that [defendant] may have contracted with for its telephone marketing, may be lost or destroyed.

*Simon v. Ultimate Fitness Grp., LLC*, No. 19-cv-890, 2019 U.S. Dist. LEXIS 147676, at \*18, 21-22 (S.D.N.Y. Aug. 19, 2019).

RESPECTFULLY SUBMITTED AND DATED this July 20, 2025.

By: /s/ Anthony I. Paronich  
Anthony I. Paronich *Pro Hac Vice*  
Paronich Law, P.C.  
350 Lincoln Street, Suite 2400  
Hingham, MA 02043  
(508) 221-1510  
[anthony@paronichlaw.com](mailto:anthony@paronichlaw.com)

Jeremy C. Jackson (PA Bar No. 321557)  
BOWER LAW ASSOCIATES, PLLC  
403 S. Allen St., Suite 210  
State College, PA 16801  
Tel.: 814-234-2626  
[jjackson@bower-law.com](mailto:jjackson@bower-law.com)